

sufficiently available to the public for the purposes of 35 USC 102(a) or (b) if it is laid open for public inspection or disseminated in printed form. The date that the patent is available to the public is the date it is available as a 35 USC 102 (a) or (b) reference. *In re Ekenstam*, 118 USPQ 349 (CCPA 1958).

In the present instance, the instant patent application is a divisional that claims priority from a parent patent application Ser. No. 09/109,676 filed July 2, 1998.

The Office action asserts that the pending claims are rendered obvious by U.S. Pat. No. 6,207,031, issued March 27, 2001. Given that the effective date of the cited reference is after the filing date of the instant application, the reference is not section 102(a) prior art. Section 102(a) proscribes granting of a patent if the invention is "described in a printed publication . . . before the invention thereof by the applicant". Given that the publication issued after the filing date of the instant application, this reference is not 102(a) prior art.

Section 102(b) proscribes granting a patent if the invention was described "in a publication more than one year prior to the application for patent in the United States". Again, the cited reference plainly does not qualify as prior art.

Given that the instant obviousness finding in sections 9 and 10 of the Office action depends entirely on a reference that is not prior art, this rejection should be withdrawn. The elements of the applicants' claims cannot be rendered obvious by the cited patent, as this reference is not prior art.

Conclusion

The applicants respectfully request reconsideration of the present rejection. A notice of allowance is earnestly solicited. If any matter requires further discussion, the Examiner is invited to call the undersigned attorney at (408) 297-9733 between 9am and 5pm Pacific Time to discuss any outstanding issues.

Respectfully submitted,

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

Signed: Merle P. Garcia
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Date: February 6, 2003



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